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From:

Sent: Fri 6/26/2009 11:11 AM

To:

Cc:

Subject: Request for Advice [REDACTED]

Here, the District Attorney obtained a notice of attachment against Taxpayer Husband. However, there is no money judgment against Taxpayer Husband in favor of the District Attorney's Office. Therefore, the District Attorney's Office is not a judgment lien creditor because it has not obtained a valid judgment in a court of record pursuant to Treas. Reg. § 6232(h)-1(g). Nor did the District Attorney did acquire the order of attachment by contract. Therefore, the District Attorney's Office does not hold a security interest against Taxpayer Husband's property under § 6323(h)(1).

Because the District Attorney's Office is not a judgment lien creditor or a holder of a security interest, lien priority is determined based on the first in time, first in right principle. United States v. City of New Britain, 347 U.S. 81, 85 (1954). The IRS assessed the following income taxes against Taxpayer Husband—

Tax Period	Date Assessed

The IRS also assessed the following tax against Taxpayer Husband and Wife—

Tax Period	Date Assessed

Based on the first in time, first in right principle, the assessment liens which arose on [REDACTED] and [REDACTED] are prior in time to the order of attachment. Accordingly, these assessments liens have priority over the

order of attachment based on the first in time, first in right principle set forth in City of New Britain.

New York law authorizes the forfeiture of instrumentalities and proceeds of crimes. See e.g. N.Y. Penal Law, § 460.30; N.Y.C.P.L.R. §§ 1310-1352. A forfeiture under local law relates back to the time of the seizure except to the extent that under local law the holder of an intervening claim or interest has priority over the interest of the local law enforcement agency. I.R.C. § 6323(i)(3). Under New York law, to complete a forfeiture so that title passes to the local agency, a trial court must issue a judgment or order of forfeiture. No New York statute provides for a local agency's interest to relate back to the time of seizure. Because title does not pass to the local agency until the order or judgment of forfeiture, intervening liens have priority over the local agency's interest. Therefore, a federal tax lien that arises before the entry of a final order of judgment of forfeiture takes priority over the local agency's forfeiture, even if the local agency obtained a provisional remedy, such as an order of attachment. See SBSE New York law guide.

Here, District Attorney's Office has not yet obtained a judgment or order of forfeiture and as such, the forfeiture is not yet complete. Therefore, federal tax liens that arise prior to the forfeiture order have priority over the District Attorney's Office's order of attachment. **As such, the federal tax assessment liens dated _____ and _____ have priority over the district attorney's interest.**

Please let me know if you have any questions or concerns.